

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Rulemaking by the Department of)

Telecommunications and Energy, pursuant to)

220 CMR sections 2.00 et seq., to promulgate)

regulations governing an expedited dispute resolution) D.T.E. 00-39

process for complaints involving competing)

telecommunications carriers as 220 CMR section)

15.00 et seq.)

REPLY COMMENTS OF RHYTHMS LINKS INC.

AND COVAD COMMUNICATIONS COMPANY

REGARDING ACCELERATED DISPUTE

RESOLUTION PROCEDURES

I. INTRODUCTION

On June 28, 2000, Rhythms Links Inc. ("Rhythms") and Covad Communications Company ("Covad") submitted Comments regarding the Department's proposed rules regarding accelerated dispute resolution procedures for telecommunications carriers. In their Comments, Rhythms and Covad lauded the Department's initiative to afford CLECs with an expedited process for obtaining the resolution of inter-carrier disputes. The availability of such an expedited process is critical to the development of meaningful telecommunications competition in general, and advanced telecommunications services competition in particular. Such an expedited process also ensures that consumers derive maximum benefit from telecommunications competition. Rhythms and Covad also offered the Department a number of specific suggestions for further streamlining the accelerated dispute resolution process.

Rhythms and Covad are gratified that at least eight other commenters have supported the Department's initiative to adopt an accelerated dispute resolution process for telecommunications carriers.⁽¹⁾ In these Reply Comments, we support several of the recommendations made by these commenters. In addition, we comment on the positions taken by Bell Atlantic-Massachusetts, which would severely undermine, if not render useless, the Department's proposed regulations.

II. RHYTHMS AND COVAD SUPPORT SEVERAL OF THE RECOMMENDATIONS MADE BY OTHER INTERESTED PARTIES

In their Comments, Rhythms and Covad proposed modifications to the Department's proposed regulations in order to further streamline the accelerated dispute resolution process. While these proposals may differ from those submitted by other interested parties which supported the adoption of accelerated dispute resolution procedures, Rhythms and Covad note that each of these other interested parties also endorsed a more expeditious timetable for the resolution of inter-carrier disputes. Rhythms and Covad reaffirm their recommendations and urge the Department to modify its proposed rules to enable a faster resolution of inter-carrier disputes. Rhythms and Covad support MediaOne's proposed clarification of Section 15.04(3) that the 10 day negotiation time frame begins when one party initiates a discussion or negotiation over the disputed issue.⁽²⁾ In this same light, we support the Joint Comments of MGC, RCN and Vitts that the Department adopt a standard analogous to 47 C.F.R. 1.721(a)(8), under which a party can establish that it made a good faith attempt to resolve a dispute.⁽³⁾ We further support MediaOne's and AT&T's suggestions that the proposed regulations be modified to enable the Department to take immediately a dispute which is service-affecting and provide immediate, preliminary relief.⁽⁴⁾

Rhythms and Covad also support the recommendation of MGC, RCN and Vitts that the proposed regulations be revised to add a section that permits the transfer of a non-accelerated dispute to the accelerated docket on Staff's own motion or at the request of one party.⁽⁵⁾ This section would enable a dispute to obtain accelerated treatment if it warranted such treatment, despite its having been initially filed as a non-accelerated matter.

III. THE DEPARTMENT SHOULD REJECT THE RECOMMENDATIONS OF BELL ATLANTIC-MASSACHUSETTS

In its Comments, Bell Atlantic-Massachusetts ("BA-MA") maintains that existing dispute resolution procedures are sufficient to address all disputes that may arise between telecommunications carriers. BA-MA further maintains that if accelerated dispute resolution procedures are adopted, they should be purely voluntary; that is, both parties to a dispute would have to consent to the use of the accelerated dispute resolution process. In addition, BA-MA proposes that the accelerated dispute resolution process should not be a substitute for interconnection agreement dispute resolution provisions. BA-MA also argues that decisions rendered in an accelerated dispute resolution proceeding should not have any precedential value in other dispute resolution proceedings and that the time intervals for accelerated dispute resolution should match those established by the Federal Communications Commission ("FCC").⁽⁶⁾ Rhythms and Covad respectfully disagree with BA-MA on these points.

First, it is evident from the initiation of this rulemaking that the Department believes that a formal accelerated dispute resolution procedure is needed and in the public interest. In a competitive marketplace in which carriers must interconnect their networks and cooperate to a high degree in order to provide efficient and reliable service to consumers at a reasonable cost, the resolution of inter-carrier disputes in an expeditious manner is of critical importance. The FCC found that such accelerated dispute resolution procedures are beneficial. From the Department's experience in dealing with inter-carrier disputes in an only now developing competitive market, it has an ample basis to conclude that prompt resolution of inter-carrier disputes is in the public interest and that adoption of formal procedures for accelerated dispute resolution will help achieve that goal. BA-MA's conclusory statement that existing procedures are adequate does not take into account the public benefits to be derived from prompt dispute resolution and the public detriment which flows from protracted inter-carrier disputes. Nor does BA-MA adequately recognize the special need for accelerated dispute resolution procedures in service-affecting situations.

Second, the Department should reject the notion that accelerated dispute resolution procedures should apply only if both parties to a dispute consent to the use of the accelerated dispute resolution process. No single party should be empowered to deprive

another party of an expeditious resolution of an inter-carrier dispute. The lack of an expedited process would result in less robust competition, as well as a degradation in the quality of telecommunications service. BA-MA has not demonstrated in its Comments how the proposed regulations would deprive it of due process. Mere statements of concern do not establish a due process violation.⁽⁷⁾

Third, BA-MA argues that the accelerated dispute resolution process should not be a

substitute for interconnection agreement dispute resolution provisions. Rhythms and Covad disagree. Indeed, the accelerated dispute resolution process should become the means through which parties resolve interconnection agreement disputes. Currently, provisions in the Covad-Bell Atlantic interconnection agreement would allow the use of the accelerated dispute resolution process should good faith negotiations fail to resolve a dispute.⁽⁸⁾ Moreover, interconnection agreements contain a change in law provision under which the parties agree to modify their interconnection agreement to conform to changes in law.⁽⁹⁾ The availability of an accelerated dispute resolution procedure is the very type of change in law which should be super-imposed upon interconnection agreements. Alternatively, the Department should make it clear in its rulemaking order that parties which have entered into interconnection agreements which have dispute resolution provisions may elect to resort to the accelerated dispute resolution procedures of the Department as a matter of right, with the party initiating the dispute resolution process determining which procedure would apply. This solution is consistent with the recommendation above that a pending dispute may be transferred to the accelerated docket on motion of the Staff or a party.

Fourth, the Department need not adopt dispute resolution intervals which are consistent with those adopted by the FCC.⁽¹⁰⁾ The FCC's intervals are too long and should not be emulated by the Department.

Finally, it appears premature for the Department to make any findings as to whether a decision in an accelerated docket should be given any precedential weight.

IV. CONCLUSION

For the reasons above and in their Comments, Rhythms and Covad urge the Department to adopt accelerated dispute resolution procedures which are consistent with their recommendations.

Respectfully submitted,

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1. MediaOne, MGC, RCN, Vits, AT&T, RNK, NECTA and the Department of the Attorney General.
2. MediaOne Comments at 2.
3. Joint Comments at 4. As stated by these interested parties, adding this provision would prevent the responding party from avoiding the other party and preventing that party from establishing that it made a good faith attempt to resolve the dispute.
4. MediaOne Comments at 2. AT&T Comments at 3.
5. Joint Comments at 4.
6. BA-MA Comments at 1.
7. BA-MA Comments at 1-2. Of course, the Department should satisfy itself that all requirements of law, including due process requirements, are met.
8. See Covad-Bell Atlantic Interconnection Agreement at 68. "Any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties, in the first instance. Should such negotiations fail to resolve the dispute in a reasonable time, either Party may initiate an appropriate action in any regulatory or judicial forum of competent jurisdiction."
9. ACI-Bell Atlantic Interconnection Agreement at 65-66.
10. 47 CFR 1.730